



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00028-CR

CHRISTOPHER BALLARD, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 251st District Court
Potter County, Texas
Trial Court No. 71,242-C, Honorable Ana Estevez, Presiding

July 25, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Appellant, Christopher Ballard, was convicted of the offense of failing to register as a sex offender during the required ten-year period.¹ As charged, the offense is a State Jail Felony.² Appellant entered a plea of guilty to the offense, pursuant to a plea agreement. The plea agreement included appellant's incarceration for a period of three years. Following his plea and with the trial court's consent, appellant filed an appeal to

¹ See TEX. CODE CRIM. PROC. ANN. arts. 62.101(b),(c); 62.102(b)(1) (West Supp. 2015).

² See *id.* art. 62.102(b)(1).

this Court. Appellant presents four issues. However, the central character of all of appellant's issues is his contention that three years' confinement is beyond the statutory maximum for a State Jail Felony offense. Thus, appellant contends, the sentence is illegal.

The State has filed its brief and agrees that three years for the offense of failure to register as a sex offender under the applicable provision of the law is a State Jail Felony. A State Jail Felony offense is punishable by confinement in a State Jail Facility for a term between 180 days and two years, with an optional fine of \$10,000. See TEX. PENAL CODE ANN. § 12.35(a), (b) (West Supp. 2015). As a result, the State has confessed error by declaring that a three-year prison sentence under the facts of this case, that is, appellant being charged with a State Jail Felony offense, is void and that the case should be remanded to the trial court for a new punishment hearing. On the other hand, appellant requests that we reverse and remand the case for a new trial.

Analysis

The law requires that one who is charged and convicted of a crime be sentenced within the parameters of the statutorily applicable range of punishment. See *Gutierrez v. State*, 380 S.W.3d 167, 175 (Tex. Crim. App. 2012). Punishment that exceeds the maximum statutory guideline is illegal. *Mizell v. State*, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003). When the parties bargain, during the plea bargaining phase of a trial, for an illegal sentence, the appropriate remedy is to return them to the positions they occupied prior to the plea bargain agreement. See *Ex parte De Leon*, 400 S.W.3d 83, 90-91 (Tex. Crim. App. 2013). *Ex parte De Leon* further holds that, if specific performance of

the plea agreement is not possible, the appropriate remedy is to withdraw the plea, with both parties, including the State, returned to their original positions. See *id.*

In the case before the Court, the agreed sentence is illegal. It exceeds the maximum as set by statute. See TEX. PENAL CODE ANN. § 12.35(a), (b). There is no way to return the parties to their original position except by withdrawing the plea and both parties beginning the process again. See *Ex parte De Leon*, 400 S.W.3d at 90-91. Accordingly, we reverse the judgment of the trial court and remand the matter to the trial court for a new trial.

Mackey K. Hancock
Justice

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